IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 252 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAHIMKHAN MAHERKHAN PATHAN

Versus

REGIONAL PASSPORT OFFICER

Appearance:

1. Special Civil Application No. 252 of 2002

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2002

ORAL JUDGEMENT

Rule. Mr NJ Shah for Mr DN Patel waives service of Rule. At the request of the learned counsel for the parties, the petition is taken up for final disposal, as

the petitioner wants to get passport for a limited purpose of Haj pilgrimage and for a limited period of two months.

2. The petitioner was earlier granted Passport No.H-071251 on 10-4-1990 which was valid upto 9-4-1995. The petitioner was prosecuted for offences punishable under section 29 read with section 20 (b) of the NDPS Act on 26-9-1994. Since the petitioner was in jail in connection with the said offence, the petitioner could not get his passport renewed. Ultimately, the learned Additional Sessions Judge, Ahmedabad acquitted the petitioner in the said criminal case vide judgment and order dated 3-7-1996. Against the said judgment, the State Government has preferred Criminal Appeal No.352 of 1997 which was admitted by this Court on 10-7-1997 and a bailable warrant in the sum of Rs.3000/- was issued. The said criminal appeal is still pending.

3. The petitioner applied for a fresh passport on 8-6-2001 mentioning that the petitioner wants to go on Haj pilgrimage. The respondent - Passport Officer however declined to issue passport on the ground that police case is pending against the petitioner. The petitioner filed Criminal Misc. Application No.9638 of 2001 in Criminal Appeal No.352 of 1997 for directions to the Regional Passport Officer as according to the petitioner the fresh passport was not being issued to the petitioner only on the ground of pending criminal appeal and it is the petitioner's case that apart from the said appeal no other prosecution is pending against the petitioner. A Division Bench of this Court disposed of the said application on 18-12-2001 after reserving liberty to the petitioner to file appropriate separate petition for challenging the decision of the Regional Passport Officer denying passport on the ground of pendency of appeal. The petitioner has, therefore, preferred the present petition.

Copy of the petition has been served on the learned Standing Counsel for the respondent - Union of India.

4. Mr NJ Shah appearing for the Regional Passport Officer states that apart from the pending Criminal Appeal No.352 of 1997, no other criminal case or police case is pending against the petitioner as per the instructions received by him from the Regional Passport Officer. Mr NJ Shah for the respondent further places on record the Government of India notification dated 25th August, 1993 stating that if criminal proceedings are

pending against a citizen of India and if such a person produces orders from the Court permitting him to depart from India, passport can be issued for a limited period specified in the Court's order. The learned counsel, therefore agrees that the respondent would have no objection if this Court passes the order directing the respondent to issue passport to the petitioner for a limited period of two months after ascertaining the travel details of the petitioner for the Haj pilgrimage.

5. In view of the above, the respondent is directed to act on the basis of the Government of India, Ministry of External Affairs' notification dated 25th August, 1993 for considering the petitioner's case for issuance of fresh passport for a limited period of two months for the purpose of Haj pilgrimage and subject to compliance with all other conditions mentioned in the aforesaid Government of India's notification dated 25th August, 1993 and in accordance with law.

6. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(M.S. Shah,J)

zgs/-